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Filing date: **04/06/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184213
Party	Plaintiff Galaxy Metal Gear, Inc.
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Date	04/06/2010
Attachments	Rebuttal-Galaxy-complete.pdf (77 pages)(664676 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No.: 78914975

Filed: 6/22/2006

Mark: METAL GEAR

GALAXY METAL GEAR, INC.,

Opposer,

vs.

DIRECT ACCESS TECHNOLOGY, INC.

Applicant.

Opposition No.: 91184213

Action filed: May 20, 2008

OPPOSER'S Rebuttal BRIEF

OPPOSER'S Rebuttal BRIEF

Opposer Galaxy Metal Gear, Inc. hereby submits its Rebuttal Brief in this proceeding regarding the Mark, "Metal Gear."

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Rebuttal to Arguments raised by Defendant/Applicant

1. Standing

Defendant/Applicant Direct Access Technology (“DAT”) raised the assertion that Opposer Galaxy has no standing.

The “standing” issue came up for the first time, almost two years after this proceeding is filed, factually based upon Tony Tan’s deposition transcript that DAT objected to.

There was no “terms” of the settlement agreement, as DAT referred to in line 17, page 15 of its Main Brief.

DAT filed trademark infringement action (a cross-complaint, responding to Galaxy’s defamation/interference action against DAT), seeking damages from Galaxy, as well as injunction against Galaxy. The case, LASC BC382375, currently set for trial on 4/19/2010.

TMEP 309.03(b) specifically gave the example where “Defendant has relied on its ownership of its application or registration in another proceeding between the parties, or defendant has asserted a likelihood of confusion in another proceeding between the parties involving the same marks”. *Tonka Corp. v. Tonka Tools*, 229 USPQ. 857, 859 (TTAB 1986) (petitioner has standing to cancel registration that has been asserted, even defensively, in a civil litigation.)

This is the first time DAT raised the “standing” issue. And in light of the proceedings between the parties (DAT’s TTAB proceeding against Galaxy’s prior

application, and the state court infringement action), such argument raises Rule 11 issues.

2. Fraud is properly pled

In the Opposition Complaint filed 5/20/2008, the opposition ground of fraud is properly pled, giving short and plain statement of the reasons that DAT committed fraud to US PTO for seeking to register the Metal Gear mark, when it is not the true owner and the first user of the Metal Gear mark.

DAT's attempt to shift focus should be disregarded.

3. Creation of mark has no relevance in ownership of mark

DAT maintained that it, through its principal Patrick Wang, created the mark and is the first one to use it in commerce.

The law is clear that the trademark right is not given to the person who was first to conceive of the idea of using a given symbol as a mark. *Aveda Corp. Evita Marketing*, 706 F.Supp. 1419, 12 USPQ.2d 1091, 1097 (D. Minn. 1989).

All the evidence re Patrick Wang created and chose the Metal Gear mark, prompting him to think that him/DAT owned the mark, is thus not relevant.

The legal presumption of manufacturer owning the mark is attested to by Galaxy's testimony and Momo Chen's testimony. DAT's one-sentence of the "claimed manufacturer is not here opposing the application, so the presumption does not apply" (line 2, page 22) is simply not the law. It is worth noting that the records show DataStor, the manufacturer and real owner of the mark, was the

supplier of all “infringing” products to Galaxy, yet DAT took no action against this real-party-in-interest.

DAT’s blatant statement that “the presumption (re manufacturer being the owner of mark) has been rebutted as Applicant has offered evidence that Applicant owns the trademark” (line 9, page 23) is simply not true.

DAT offered NOTHING that met the requirement of TMEP 1201.06, as explained earlier.

Response to Evidentiary Objections

1. Momo Chen deposition transcript

On 8/24/2009, after a fully brief motion, the Board has ruled (TTABVUE docket number #29) that Momo Chen discovery deposition is entered as trial testimony and opposer’s notice of reliance offering such deposition is accepted, citing Trademark Rules 2.120(j)(2) and (3)(i) admissible as trial evidence. Therefore, any objections to the deposition of Momo Chen is not well grounded.

Furthermore, as Momo Chen is a nonparty residing in a foreign country, she cannot be compelled to comply with 37 CFR §2.123(e)(5). As previously determined by the TTAB, Momo Chen was clearly not willing to participate in this case other than appearing for her discovery deposition. Opposer was not able to obtain Momo Chen’s signature of the transcript in front of an officer authorized to administer oaths in Taiwan, and there is no mechanism to compel Momo Chen to sign the transcript, much less before a person authorized to administer oaths.

Therefore, the requirement of TMPB 703.01(j) for the signature of the deposition of Momo Chen, a nonparty residing in a foreign country, should be waived.

Moreover, the requirement regarding the signature of depositions by a witness refers to trial testimony. TMBP 703.01(j) [“the signature of a deposition by the witness is governed by 37 CFR §2.123(e)(5)”]. As 37 CFR §2.123(e)(5) specifically states that it concerns “trial testimony” and makes no mention of discovery deposition, this requirement should not apply to the discovery deposition of Momo Chen.

In addition, objections to the use of depositions will not be sustained of “merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to that the objection was raised at the time specified.” 37 CFR §2.123(j).

The applicant, and two attorneys for the applicant, were present at Momo Chen’s discovery deposition. The only objection raised regarding the deposition in general was that it was noticed for both this proceeding and state court litigation involving the same parties at the same time. Nevertheless, as seen in the transcript, such notice did not prevent applicant from thoroughly questioning Momo Chen. Between the certification of the deposition transcript and applicant’s presence at the deposition by party and two counsel, there is no substantial injury to applicant because of the absence of a signature from Momo Chen.

A full copy of the Momo Chen deposition transcript, including the exhibits is submitted herein.

2. Tony Tan deposition transcript

Applicant's counsel fully participated in the Tony Tan deposition and there is no harm resulted in DAT's defending this action.

A transcript of a testimony deposition can be filed at any time prior to the submission of the case for final decision. TBMP 703.01(k). Where a witness did not sign his deposition, the defect is curable and additional time is granted to file and serve a signed copy. *Tampa Rico, Inc. v. Puros Indian Cigars, Inc.*, 56 USPQ2d 1382, 1383 (TTAB 2000).

A notarized signature page for the Tony Tan deposition transcript is attached herein, to cure the defect.

3. Patrick Wang deposition taken July 6, 2009

The patent (6,992,885) issued to Chia-Jen Wang (aka Anderson Wang) showed that Patrick Wang's credibility (the lack thereof) in not informing US PTO that he contributed substantially to the invention of said 885 patent; this raised the credibility issue, as explained in the main brief, couched in terms of "duty of candor".

4. Patrick Wang deposition taken December 12, 2009

All the questions and answers related to the rebuttal of DAT's claim of ownership.

Interestingly, DAT did not raise the improper questions/answers during the rebuttal deposition and did not challenge Galaxy's "lack of standing" throughout the whole proceeding,

To say that Exhibit 9 (DAT's Cross-Complaint of trademark infringement against Galaxy) is irrelevant to the issues in this proceeding is unreasonable especially when DAT is challenging Galaxy's "standing" in bringing this opposition.

SUMMARY

Based on the above authority, argument, and evidence, Opposer submits that the Metal Gear application should be refused, the file stamped "Abandoned," and all proceedings to be considered terminated.

Respectfully submitted,

Dated: April 6, 2010

/jflee/

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CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that a true copy of the foregoing OPPOSER'S Rebuttal Brief was served by depositing a copy of same in the United States mail, first class postage prepaid, to the following address on 4/6/2010.

Michael Olson, Esq.
Law Office of Michael C. Olson
1400 Bristol St. N.
Suite 270
Newport Beach, CA 92660

/jflee/

Jen-Feng Lee

MOMO CHEN

DEPOSITION TRANSCRIPT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GALAXY METAL GEAR, INC., a)	
California corporation,)	
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Plaintiff,)	
)	
vs.)	No. BC 382375
)	
DIRECT ACCESS TECHNOLOGY, INC., a)	
California corporation;)	
)	
Defendants.)	
)	
)	
AND RELATED CROSS-ACTIONS.)	
)	

DEPOSITION OF MOMO CHEN
Thursday, November 13, 2008
Pasadena, California

REPORTED BY: Jamie B. Snyder, CSR No. 5159

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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GALAXY METAL GEAR, INC., a)
5 California corporation,)
 Plaintiff,)

6

 vs.) No. BC 382375

7

DIRECT ACCESS TECHNOLOGY, INC., a)
8 California corporation;)
 Defendants.)

10

AND RELATED CROSS-ACTIONS.)

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14 Deposition of MOMO CHEN, a Witness, taken on
15 behalf of the Plaintiff and Cross-Defendant
16 GALAXY METAL GEAR, at 80 South Lake Avenue,
17 Suite 708, Pasadena, California 91101, commencing
18 at the hour of 10:10 a.m., Thursday, November 13,
19 2008, before Jamie B. Snyder, CSR No. 5159,
20 pursuant to Notice of Taking Deposition and
21 Subpoena.

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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14 DEPOSITION OF MOMO CHEN

15 Thursday, November 13, 2008

16 Pasadena, California

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19 REPORTED BY: Jamie B. Snyder, CSR No. 5159

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GALAXY METAL GEAR, INC.,)	
)	
Opposer,)	
)	
vs.)	No. 91184213
)	
DIRECT ACCESS TECHNOLOGY, INC.,)	
)	
Applicant.)	
)	

Deposition of MOMO CHEN, a Witness, taken on
behalf of the Opposer, at 80 South Lake Avenue,
Suite 708, Pasadena, California 91101, commencing
at the hour of 10:10 a.m., Thursday, November 13,
2008, before Jamie B. Snyder, CSR No. 5159,
pursuant to Notice of Taking Deposition and
Subpoena.

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff and Cross-Defendant GALAXY METAL GEAR, INC.
4 (in Case No. BC 382375) and Opposer in Case No.
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24 YINING LIU

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3 Also Present:

4 PATRICK WANG

5 LUCY YEE

6 GEOFFREY CHING

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I N D E X

WITNESS	EXAMINATION	PAGE
Momo Chen	By Mr. Tanji	8
	By Mr. Olson	33
EXHIBITS FOR IDENTIFICATION		
Plaintiff's 1	A copy of a document entitled "Subpoena in a Civil Case"; and a copy of a document entitled "Deposition Subpoena For Personal Appearance"; 3 pages	9
Plaintiff's 2	A copy of Ms. Chen's passport	11
Applicant's 3	A copy of an e-mail dated Friday, July 09, 2004 to Patrick from Gary Chen	50

1 PASADENA, CALIFORNIA, THURSDAY, NOVEMBER 13, 2008

2 10:10 A.M.

3 * * *

4

5 YINING LIU,

6 an interpreter of the Mandarin language, was first
7 duly sworn to well and truly and to the best of her
8 ability translate English into Mandarin and Mandarin
9 into English in the matter herein set forth; and
10 thereupon,

11

12 MOMO CHEN,

13 the witness herein, having been first duly sworn, was
14 examined and testified as follows:

15

16 EXAMINATION +

17 BY MR. TANJI:

18 Q. Please state your full name.

19 A. Chinese or English?

20 Q. Both.

21 A. Chinese name, Chen Li Chun. English name is
22 Momo Chen.

23 Q. You're here today for a deposition in two
24 different legal cases, one is a State of California
25 case, and one is with the trademark appeal board. Both

1 cases are between Galaxy Metal Gear, Inc. and
2 Direct Access Technology, Inc.

3 A. Yes.

4 Q. And you were served with deposition subpoenas
5 for both cases, right?

6 A. Yes.

7 MR. TANJI: All right. I'm going to attach as
8 Exhibit 1 the subpoenas.

9 (The aforementioned documents were marked
10 by the reporter as Plaintiff's Exhibit+ 1, for
11 identification; attached hereto.)

12 MR. OLSON: Are you attaching both as
13 Exhibit 1?

14 MR. TANJI: Yes.

15 MR. OLSON: Note -- note my objections in
16 noticing the deposition in both cases at the same time.
17 BY MR. TANJI:

18 Q. Now, for this deposition, you've been placed
19 under oath, so even though you're here in my office, the
20 testimony today has the same effect as it would be if
21 you were in a court; do you understand that? Do you
22 understand that?

23 A. Yes.

24 Q. And just for some quick ground rules, if we
25 ask you a question and you don't understand it, it's up

1 to you to tell us you don't understand the question.

2 Okay?

3 A. I understand.

4 Q. And there is a court reporter to your left
5 that is taking down the testimony, and anything else
6 that people say in this room, so when you respond to
7 questions, you have to respond audibly in words, and not
8 by things like nodding your head. Okay?

9 A. I understand.

10 Q. You're going to be asked some questions that
11 you will not know the exact answer to, but you can give
12 some sort of answer based on your knowledge, so we are
13 entitled to your best answer or best estimate, but we do
14 not want you to guess at any answer; do you understand
15 that?

16 A. I understand.

17 Q. Are you feeling okay to answer questions from
18 the attorneys at this time?

19 A. Okay (in English).

20 THE INTERPRETER: "Okay."

21 BY MR. TANJI:

22 Q. Of what country are you a citizen of?

23 A. Taiwan.

24 Q. Where do you live right now?

25 A. Taiwan.

1 Q. Do you have a home address?

2 A. Yes.

3 Q. What is that?

4 A. In Chinese?

5 300, No. 8 Lane, No. 15, Fourth floor, San Min

6 Avenue, San Chung City in Taipei County.

7 Q. Do you have a passport?

8 A. Yes.

9 Q. Can I see it?

10 A. (Witness complies.)

11 MR. TANJI: Let the record reflect the witness

12 handed me a passport from the Republic of China.

13 Q. And this is your passport?

14 A. Yes.

15 MR. TANJI: All right. Exhibit 2 will be the

16 identification page of the passport.

17 (The aforementioned document was marked by

18 the reporter as Plaintiff's Exhibit+ 2, for

19 identification; attached hereto.)

20 BY MR. TANJI:

21 Q. Do you have any current plans to live in the

22 U.S. in the next six months or so?

23 A. No.

24 Q. When you were served with the deposition

25 subpoena, where was that?

1 A. In the United States.

2 Q. Okay. Where?

3 A. At Mr. Jeff Lee's office.

4 Q. When were you given the deposition subpoena?

5 A. This Tuesday (in English).

6 THE INTERPRETER: "This Tuesday."

7 BY MR. TANJI:

8 Q. Where do you work right now?

9 A. JEM (in English).

10 THE INTERPRETER: "JEM."

11 BY MR. TANJI:

12 Q. What kind of company is that?

13 A. Electrical products.

14 Q. Where are they located?

15 A. Taiwan.

16 Q. You need to wait for the translator to

17 interpret the question.

18 A. Okay (in English).

19 THE INTERPRETER: "Okay."

20 BY MR. TANJI:

21 Q. How long have you worked for JEM?

22 A. One year.

23 Q. What do you do for work at JEM?

24 A. Sales.

25 Q. Can you give me an example of some of the

1 things you do for JEM?

2 A. My work includes general sales, for instance,
3 sent e-mails -- sent mails and visit clients.

4 Q. What kind of products are you selling for JEM?

5 A. Cable and peripheral products of electronics.

6 Q. Anything else?

7 A. No (in English).

8 THE INTERPRETER: "No."

9 BY MR. TANJI:

10 Q. Before JEM, where did you work?

11 THE INTERPRETER: Counsel, would you repeat?

12 BY MR. TANJI:

13 Q. Before JEM, where did you work?

14 A. Tagan, T-a-g-a-n (in English).

15 THE INTERPRETER: "T-a-g-a-n, Company."

16 BY MR. TANJI:

17 Q. What kind of company is that?

18 A. Trading company.

19 Q. Where are they located?

20 A. City of Industry.

21 Q. When did you work for Tagan?

22 A. In the year 2007, from July till August and
23 September -- until the middle of August, about three
24 months.

25 Q. Why did you stop working for Tagan?

1 A. Because I wanted to go back Taiwan.

2 Q. What work did you do for Tagan?

3 A. Same, sales.

4 Q. What kind of products?

5 A. Same thing, computer peripherals.

6 Q. Before Tagan, where did you work?

7 A. Data Store.

8 Q. Where are they located?

9 A. In Taiwan.

10 Q. When did you start working for Data Store?

11 A. In March 2004.

12 Q. When did you stop working for Data Store?

13 A. Until the year 2007.

14 Q. All right. I'll talk to you more about Data

15 Store in a minute.

16 Where did you work before Data Store?

17 A. I don't quite remember.

18 Q. All right. Do you remember what kind of

19 company?

20 A. Similar companies, selling products of

21 electronics.

22 Q. And where is this company located?

23 A. In Taiwan.

24 Q. Do you remember any of your other jobs before

25 Data Store?

1 A. Yes.

2 Q. What other jobs have you had?

3 A. Similar jobs, sales.

4 Q. Do you remember any of the companies?

5 A. I cannot quite remember.

6 Q. How long had you been working sales before

7 Data Store?

8 A. About seven or eight years.

9 Q. What's your education?

10 A. University (in English).

11 Bachelor from university.

12 Q. Which university?

13 A. Shijian University.

14 Q. Where are they located?

15 A. In Taiwan.

16 Q. All right. Let's go back to your work for

17 Data Store. You said you started there in 2004?

18 A. (No audible response.)

19 Q. When you started for Data Store, what was your

20 job?

21 A. Sales.

22 Q. Did that job ever change until the time you

23 left Data Store in 2007?

24 A. No.

25 Q. What were your job duties for Data Store?

1 A. Customer development, sales and visiting
2 clients.
3 Q. What kind of products were you selling for
4 Data Store?
5 A. External enclosure.
6 Q. Anything else?
7 A. The major product is the external enclosures.
8 Q. But did you sell other products for Data
9 Store?
10 A. To where or to what customers?
11 Q. I'm just asking in general, besides
12 enclosures, did you sell any other types of products for
13 Data Store?
14 A. Nothing else, just external enclosures.
15 Q. You mentioned you did customer development for
16 Data Store, so what did you do for that?
17 A. Write those letters for customer development,
18 participate in exhibitions, visiting clients and also
19 involved in the advertisement of the company.
20 Q. Anything else?
21 A. No (in English).
22 THE INTERPRETER: "No."
23 BY MR. TANJI:
24 Q. When you would write letters, what kind of
25 letters would those be?

1 A. Introducing our products, specific features of
2 our products.

3 Q. And who would you write letters to?

4 A. To those that I believe are our valued
5 clients.

6 Q. How did you find these companies?

7 A. Magazines or from the Internet.

8 Q. When you went to exhibitions, what did you do?

9 A. Prepare our catalogs, and some general
10 introductions of our products of the company.

11 Q. When you would visit clients or customer --
12 or, actually, withdraw the question.

13 You said you visited customers?

14 A. Yes.

15 Q. Were these existing customers or potential
16 customers or both?

17 A. Both.

18 Q. When you would visit a potential customer,
19 what would you do?

20 A. Will show them our company information,
21 general introduction, and show them our new products.

22 Q. When you would visit an existing customer,
23 what would you do?

24 A. I would talk about the cases that we are
25 handling at that moment, and also introduce them the new

1 products, and also the development directions.

2 Q. What did you do for advertising for Data
3 Store?

4 A. We provide them our products information for
5 the company to advertise for the sales.

6 Q. Would you create the actual advertisement?

7 A. No.

8 Q. So somebody else would do the advertisement,
9 but you would provide that person with the information?

10 A. Yes.

11 Q. Regarding the external enclosures that you
12 were selling for Data Store, did you have an
13 understanding as to where those enclosures were
14 manufactured?

15 A. Yes.

16 Q. Where?

17 THE INTERPRETER: Counsel, sorry.

18 BY MR. TANJI:

19 Q. Where?

20 THE INTERPRETER: I need to go back to the
21 question. I think I missed the translated portion.

22 MR. TANJI: Okay.

23 THE WITNESS: To Europe and America.

24 BY MR. TANJI:

25 Q. Oh, my question was if you had an

1 understanding as to where the enclosures were
2 manufactured?

3 A. The manufactured products for Data Store were
4 made in Mainland China.

5 Q. Do you have an understanding as to whether the
6 enclosures were manufactured because of an order by Data
7 Store?

8 A. Data Store would design and manufacture the
9 products themselves.

10 Q. For the external enclosures that you were
11 selling for Data Store, was there a particular brand
12 name for them?

13 A. Yes.

14 Q. What was that?

15 A. Metal Gear, not just that one, and many
16 others.

17 Q. What others?

18 A. Galaxy.

19 Q. What else?

20 A. And some are for other customers.

21 Q. What do you mean by that?

22 A. External enclosure is one kind of product, it
23 could be put with many names, and we would do it
24 according to our clients' request, whatever names they
25 like, we would put the name.

1 Q. Now, you mentioned this name of Metal Gear, so
2 is that a name that a client wanted?

3 A. That was a name that Data Store originally had
4 it, and the customer liked it, so used it.

5 MR. OLSON: Well, I'll object for speculation.

6 MR. GURITZKY: Join.

7 BY MR. TANJI:

8 Q. How do you know that Data Store had the name?

9 A. They had their existing products for this
10 name, and those were sold to many other customers.

11 MR. OLSON: I'll object as hearsay.

12 MR. GURITZKY: Join.

13 BY MR. TANJI:

14 Q. What customers were those?

15 A. We sold it to DAT, Galaxy, CompUSA.

16 Q. Any others that you know about?

17 A. Others --

18 THE INTERPRETER: Counsel, may I clarify?

19 (The interpreter and the witness speak in
20 Mandarin.)

21 THE WITNESS: Others, if not handled by
22 myself, I wouldn't know.

23 BY MR. TANJI:

24 Q. So are you saying that for DAT, Galaxy and
25 CompUSA, you worked on those accounts?

1 A. Yes.

2 Q. And when you said something about the customer
3 liking it, what did you mean?

4 A. If customers liked our products, they would
5 order -- they would purchase our products, and they will
6 order again.

7 Q. But I was talking specifically about the
8 Metal Gear enclosure, so you're saying something that
9 the customers liked that name?

10 MR. OLSON: I'll object; it's leading.

11 MR. GURITZKY: Join.

12 THE WITNESS: Data Store would design their
13 own products with their specific features, including the
14 name, and we would show this to our customers. If the
15 customers liked the design, then they would take it.

16 BY MR. TANJI:

17 Q. But by name, do you mean the Metal Gear name?

18 MR. OLSON: I'll object; it's leading and
19 speculative.

20 THE WITNESS: Correct.

21 MR. GURITZKY: Join.

22 BY MR. TANJI:

23 Q. Well, wait. Which name are you talking about?

24 A. The three companies that I just mentioned, I
25 am referring to Metal Gear.

1 MR. OLSON: I'll object; speculation, it calls
2 for -- also hearsay.

3 MR. TANJI: All right. Well, let's talk about
4 CompUSA.

5 Q. So tell me how CompUSA came to order products
6 from Data Store.

7 MR. GURITZKY: That calls for a narrative.

8 MR. OLSON: I'll join.

9 THE WITNESS: May I answer?

10 MR. TANJI: Yes.

11 THE WITNESS: Those companies, CompUSA, DAT
12 and Galaxy, those I took over the business, the accounts
13 from a previous sales. When I started in Data Store,
14 soon after, that person left, so I took over the work
15 for CompUSA, including delivery of products, and, also,
16 same thing for DAT and Galaxy.

17 BY MR. TANJI:

18 Q. Who is the person you took over the CompUSA
19 account from?

20 A. I think the interpreter is not translating the
21 same as what you said.

22 Q. The last question or your answer?

23 A. Are you asking the counter window of CompUSA?

24 Q. Ma'am, my last question was you said you took
25 over the CompUSA account from somebody else. Who was

1 that person?

2 A. That's the person, the salesperson before me.

3 Q. Yeah. Do you remember that person's name?

4 A. Yes.

5 Q. Who was that?

6 A. Gary.

7 Q. Last name?

8 A. I don't remember.

9 Q. Was that the Gary who now works at Galaxy?

10 A. Of course not.

11 Q. What products was Data Store selling at

12 CompUSA when you worked on that account?

13 A. Same thing, external enclosures.

14 Q. Did the enclosures have a name?

15 A. Yes.

16 Q. What was that?

17 A. Metal Gear.

18 Q. Was the words "Metal Gear" on the enclosures

19 that were sold by Data Store to CompUSA?

20 A. Yes.

21 Q. As far as you know, did Data Store need any

22 license to sell an enclosure to CompUSA with Metal Gear

23 written on it?

24 MR. OLSON: Calls for speculation.

25 MR. GURITZKY: Join. Lacks foundation.

1 MR. OLSON: And, also, object it calls for a
2 legal conclusion.

3 MR. GURITZKY: Join.

4 THE WITNESS: Can you repeat the question?

5 MR. TANJI: I'll have the court reporter read
6 it.

7 (The record was read by the reporter as
8 follows:

9 "Q. As far as you know, did Data Store
10 need any license to sell an enclosure to
11 CompUSA with Metal Gear written on it?")

12 MR. GURITZKY: Same objections.

13 THE WITNESS: No.

14 BY MR. TANJI:

15 Q. As far as you know, did Data Store have any
16 licensing agreement with anyone regarding the sale of
17 the enclosures of Metal Gear that was sold by Data Store
18 to CompUSA?

19 A. No. As a salesperson, the more products we
20 could sell, the better, as far as I understand.

21 MR. TANJI: All right. I'll have the court
22 reporter repeat that question.

23 (The record was read by the reporter as
24 follows:

25 "Q. As far as you know, did Data Store

1 have any licensing agreement with anyone
2 regarding the sale of the enclosures of Metal
3 Gear that was sold by Data Store to CompUSA?")

4 THE WITNESS: As far as I know, no.

5 BY MR. TANJI:

6 Q. As far as you know, for the enclosures with
7 Metal Gear that Data Store sold to CompUSA, did Data
8 Store have to share any of the revenues or profits with
9 anyone?

10 MR. OLSON: I'm going to object; speculation.

11 MR. GURITZKY: Join.

12 THE WITNESS: No. No, because we're only
13 making the sales.

14 BY MR. TANJI:

15 Q. How many units of enclosures with Metal Gear
16 did Data Store sell to CompUSA while you worked at Data
17 Store?

18 A. I cannot remember the exact figure, but about
19 over 1,000.

20 Q. Do you remember who you dealt with at CompUSA?

21 THE INTERPRETER: Counsel, would you --

22 BY MR. TANJI:

23 Q. Do you remember which person at CompUSA you
24 had contact with?

25 A. I don't quite remember.

1 Q. Regarding Galaxy Metal Gear, how many
2 enclosures with Metal Gear did Data Store sell to them
3 while you worked at Data Store?

4 A. I left quite some time ago, so I don't quite
5 remember. About, I think, over 5K.

6 Q. Who did you have contact with at Galaxy while
7 you worked at Data Store?

8 A. Tony and Gary.

9 Q. When Galaxy was buying enclosures from Data
10 Store with Metal Gear on it, was that a situation in
11 which they liked the name or is that a name that they
12 came up with?

13 A. They purchased the products from Data Store.
14 We had this name, and they liked the name.

15 Q. When you worked at Data Store, how many
16 enclosures of Metal Gear did Data Store sell to
17 Direct Access Technology?

18 A. As far as I know, same thing, it's quite some
19 time ago. I remember they had quite some volume. About
20 or at least 10K.

21 MR. GURITZKY: Could I have that question read
22 back, please?

23 (Question read.)

24 MR. GURITZKY: Thank you.

25 BY MR. TANJI:

1 Q. Who had the Direct Access Technology account
2 at Data Store before you?

3 A. Same thing, the salesperson before me.

4 Q. And that was?

5 A. There were several. One of them is called
6 Benson.

7 Q. Do you remember anybody else?

8 A. Sorry, no, just this one.

9 Q. When you worked at Data Store, who did you
10 deal with at -- who did you have contact with at
11 Direct Access Technology?

12 A. Patrick.

13 Q. Okay. Do you have a last name?

14 A. Wang.

15 Q. Anybody else?

16 A. At that time, there should be another person
17 that's his wife, but I didn't have much contact with the
18 wife.

19 Q. When you would contact Patrick Wang, while you
20 were at Data Store, what would you be contacting him
21 for?

22 A. Same thing, the general work for a
23 salesperson, order products, and ask about what specific
24 style or product they want, and also including
25 collecting the payment.

1 Q. Did all the products that Data Store sell to
2 DAT while you were working on it, those were all
3 enclosures?

4 A. Correct.

5 Q. Were those enclosures all having the name of
6 Metal Gear?

7 A. Correct.

8 Q. Do you remember what contacts you had with
9 Patrick's wife, what those were about?

10 A. I don't quite remember. I know sometimes I
11 would check about delivery and also about payment, but I
12 don't remember the details.

13 Q. Did you have an understanding, when Data Store
14 was selling Metal Gear enclosures to Direct Access
15 Technology, that was Direct Access Technology's name or
16 a name that was Data Store's?

17 MR. OLSON: I'll object; calls for
18 speculation.

19 MR. GURITZKY: Join.

20 THE WITNESS: Metal Gear is the name of Data
21 Store product, so the products that I sold were all Data
22 Store products.

23 BY MR. TANJI:

24 Q. While you worked at Data Store, did you try to
25 sell Metal Gear enclosures to other companies besides

1 the ones we've talked about which is Direct Access
2 Technology, Galaxy, CompUSA?

3 A. Yes. As I said, as a sales, the more sales,
4 the better for the company. And I also need to develop
5 potential customers, and including go through the
6 Internet, but development is not easy, sometimes I send
7 out e-mails, but I didn't get very good responses.

8 Q. What other companies specifically did you try
9 to sell Metal "box" enclosures to?

10 A. For instance, from the Internet, NewEgg.

11 N-e-w-E-g-g (in English).

12 THE INTERPRETER: "N-e-w-E-g-g."

13 BY MR. TANJI:

14 Q. What did you do to try to sell Metal Gear
15 enclosures to NewEgg?

16 A. We would send out the development letter with
17 the introduction of the products and the pictures of the
18 product.

19 Q. And that's the picture of the Metal Gear
20 enclosure?

21 A. Yes.

22 Q. Did you ever get any positive response from
23 NewEgg?

24 A. No.

25 Q. Do you remember any other companies that you

1 tried to sell Metal Gear enclosures to?

2 A. Because it has been quite some time, and also

3 I didn't get much feedback, so I don't remember.

4 Q. How many other companies did you try to sell

5 Metal Gear enclosures to?

6 A. I don't quite remember, but about ten, those

7 are through Internet. It's easy to just send out

8 e-mails, but not much feedback.

9 Q. Did you ever try to sell Metal Gear enclosures

10 to Frye's?

11 A. Yes.

12 Q. Was it similar to what you did with NewEgg?

13 A. Yes.

14 Q. Were there other sales reps that worked the

15 Data Store doing similar things that you were doing at

16 the same time?

17 MR. GURITZKY: Vague and ambiguous.

18 THE WITNESS: May I answer?

19 MR. TANJI: Yes.

20 THE WITNESS: Of course there were, there were

21 other, many salesperson in the company, it's impossible

22 for a company just had one salesperson.

23 BY MR. TANJI:

24 Q. Do you have an understanding as to whether any

25 of these other sales reps at Data Store were selling

1 enclosures with Metal Gear on them?

2 A. Yes.

3 Q. And how do you know that?

4 A. Because we would have sales meeting, and we

5 would let everybody know about our development. It just

6 was different areas. I didn't know the details.

7 Q. Now, you mentioned before that there were some

8 customers that wanted their own names on the enclosures;

9 is that right?

10 A. Yes.

11 Q. Can you give me an example of that?

12 A. For instance, the ICY Box for Raidsonic. Yes,

13 the company name is Raidsonic, and the product name on

14 the enclosure is ICY Box.

15 Q. What country is Raidsonic in?

16 A. Germany.

17 May I have some water?

18 MR. OLSON: Do you need a break?

19 THE WITNESS: It's okay (in English).

20 THE INTERPRETER: "No, I'm fine. It's okay."

21 BY MR. TANJI:

22 Q. So regarding your deposition testimony today,

23 how did you get from Taiwan to Los Angeles?

24 A. I took a flight from Taiwan to San Francisco,

25 and then from there to here.

1 Q. Who paid for the flight?

2 A. Galaxy paid for my ticket.

3 Q. And have you been staying in a hotel in the

4 Los Angeles area this week?

5 A. Yes.

6 Q. Which hotel?

7 A. Best Western.

8 Q. And who is paying for that?

9 A. Galaxy.

10 Q. Is Galaxy paying you any other expenses or

11 money for your deposition testimony?

12 A. Yes. They would pay me the five-day salary,

13 according to my Taiwan salary, and also they would pay

14 for the rental car.

15 Q. How much is your Taiwan salary?

16 A. 120 U.S. dollars a day.

17 Q. And how many days is that?

18 A. Five days.

19 Q. Have you been able to do any work on this

20 current trip?

21 A. Yes. I visit some of the clients, just take

22 this opportunity to do so.

23 Q. And your presence here, is that an agreement

24 just for a deposition, not for trial?

25 A. Yes, just for the deposition. Correct.

1 MR. TANJI: All right. I don't have any
2 further questions at this time, but I would like a
3 couple-minute break.

4 MR. OLSON: Sure.

5 (A ten-minute recess was taken.)

6 MR. TANJI: I'll just finish up that you're
7 entitled, by state law, to a witness fee, it's \$35 plus
8 .20 a mile, and so it's a check for \$45.80.

9 THE WITNESS: Okay (in English).

10 MR. TANJI: I pass on the questioning.

11 MR. OLSON: Okay.

12

13 EXAMINATION +

14 BY MR. OLSON:

15 Q. Ms. Chen, my name is Mike Olson. I'm going to
16 ask you a couple of questions.

17 A. Okay.

18 MR. TANJI: Excuse me. Just so we're clear,
19 can you identify your party?

20 MR. OLSON: Yeah. I represent DAT in the
21 trademark proceedings.

22 Q. Now, you said before you were served with a
23 subpoena in Mr. Lee's office; is that correct?

24 A. Correct.

25 Q. And Mr. Lee, he's the attorney for Galaxy,

1 correct?

2 A. Yes.

3 Q. Had you agreed to come to the United States
4 and testify in this deposition before you were served
5 with a subpoena?

6 A. Yes.

7 Q. Had Galaxy agreed to pay your salary, five-day
8 salary, before you came to the United States?

9 A. Yes.

10 Q. Did you discuss that you were going to be paid
11 five-day salary with Mr. Lee?

12 A. The five-day salary, I discussed it with
13 Galaxy.

14 Q. Did you talk with Mr. Lee in his office before
15 you were served with a subpoena?

16 A. Yes.

17 Q. And did you talk with him after you were
18 served with the subpoena?

19 A. After I received the subpoena?

20 Q. Yes.

21 A. Are you talking about the same day, when I
22 received the subpoena, or the next day after that?

23 Q. Any other time after you got served, have you
24 talked with Mr. Lee?

25 A. At the time when I received the subpoena, we

1 talked about it for a little while.

2 Q. Okay. At any time, did you tell Mr. Lee that
3 you were going to receive five-days' salary from Galaxy
4 for your testimony?

5 A. Yes.

6 Q. Okay. And how about Mr. Tanji, did you tell
7 him?

8 A. Yes.

9 Q. Okay. When was it that you told Mr. Tanji
10 about your getting paid five-days' salary?

11 A. The same day when I received the subpoena.

12 Q. Had you received the five-day salary before
13 you received the subpoena?

14 A. No.

15 Q. Have you received the five-day salary as of
16 today?

17 A. No.

18 Q. So that they promised to pay you the salary,
19 but they haven't paid it yet; is that correct?

20 A. Yes.

21 Q. Is Galaxy still a customer of yours?

22 A. For my current company, yes.

23 Q. What kind of products are they buying from
24 your current company?

25 A. HDMI cable and HDMI switch, it's different,

1 it's not external enclosure.

2 Q. Are those sold under the name of Galaxy Metal

3 Gear?

4 A. No Metal Gear, just Galaxy.

5 Q. Is it your understanding that Galaxy was owned

6 by Data Store?

7 MR. TANJI: Objection; calls for speculation.

8 THE WITNESS: What do you mean by "owned by"?

9 BY MR. OLSON:

10 Q. That Galaxy was the only one that had the

11 right to use that trademark -- well, strike that.

12 That Data Store was the only one who had the

13 right to use Galaxy?

14 MR. TANJI: Objection; calls for speculation.

15 THE WITNESS: For that part, I'm not sure.

16 BY MR. OLSON:

17 Q. Did you contact anyone at Data Store and ask

18 them if it was okay to put Galaxy on HDMI cables that

19 your new company is selling?

20 A. No.

21 Q. By the way, when you were at Data Store, did

22 you receive extra salary if you had more sales?

23 A. Are you talking about Data Store?

24 Q. Yeah, at Data Store.

25 A. Not extra salary, but bonus.

1 Q. So if you had more sales, you get a bigger
2 bonus while you were at Data Store?

3 A. Yes, they have a system for bonus.

4 Q. Why did you leave Data Store?

5 A. Because Data Store had their own problems, it
6 was a family company. They had internal fights between
7 brothers, so I didn't want to get involved into it.

8 Q. Were you asked to leave Data Store?

9 THE INTERPRETER: Sorry, Counsel?

10 BY MR. OLSON:

11 Q. Were you asked by Data Store to find a new
12 job?

13 A. No. I did it on my own.

14 Q. Exhibit 2 is the front page of your passport
15 or the face page, correct?

16 A. Correct.

17 Q. Okay. And what year were you born?

18 A. 1968.

19 Q. And what year did you graduate college?

20 A. It's quite some time ago. Let me count.
21 Around the year 1989 or 1990.

22 Q. After you graduated, did you start working in
23 sales?

24 A. No. I started from an assistant.

25 Q. A sales assistant?

1 A. Everything, just the assistant for sales, for
2 administration, everything.

3 Q. Okay. And how many companies did you work for
4 after you graduated and before you start working at Data
5 Store?

6 A. I don't quite remember, but at least about
7 five companies.

8 Q. Were you involved in selling electronic parts
9 before Data Store?

10 A. Yes.

11 Q. And did you work at Data Store -- well, strike
12 that.

13 When you were first hired at Data Store, were
14 you hired as an assistant in the sales department?

15 A. No. I hired as a salesperson.

16 Q. Were you hired as a sales manager?

17 A. There's a difference to the outside. It is
18 referred as sales manager, but for internal business, it
19 is deputy manager for sales.

20 Q. Were you a deputy manager for sales?

21 A. Yes. In the company, yes.

22 Q. When you were hired, you were hired as deputy
23 manager of sales?

24 A. Yes.

25 Q. And you worked at Data Store for two years?

1 A. I would say three years.

2 Q. What product were you selling when you first
3 started at Data Store?

4 A. Same products, external enclosure.

5 Q. Were you -- when you first started at Data
6 Store, was DAT already a customer?

7 A. Yes.

8 Q. And when you first started at Data Store,
9 whose account was -- was DAT?

10 A. As far as I know, at that time, it was Gary,
11 and also my boss would also contact him.

12 Q. And who was your boss?

13 A. Anderson.

14 Q. Okay.

15 A. Actually, Anderson had known him for a long
16 time.

17 Q. By the way, you said you worked at Tagan
18 Company in City of Industry?

19 A. Mm-hmm. Yes.

20 Q. Do you know the address?

21 A. I don't quite remember. I tried to remember
22 the street number.

23 Q. Do you know what street it was on?

24 A. Aside Gale (in English).

25 THE INTERPRETER: "Aside Gale."

1 THE WITNESS: Beside Gale. The zip code is
2 Ca 91745, but I don't quite remember the street number,
3 14-something.

4 Q. Who is the owner?

5 A. The boss of Tagan?

6 Q. Yeah. Do you recall his name?

7 A. I contact my supervisor, the manager above me,
8 but who do you want to know, my direct boss or the
9 owner?

10 Q. If you know the owner's name, I'd like to know
11 that.

12 A. No, I don't know.

13 Q. Okay. Who is your immediate supervisor,
14 what's his name?

15 A. Naninni, N-a-n-i-n-n-i (in English).

16 THE INTERPRETER: "N-a-n-i-n-n-i."

17 THE WITNESS: Mr.

18 BY MR. OLSON:

19 Q. Do you have a green card?

20 A. No.

21 Q. Do you have -- did you have work authorization
22 from the United States to work in the United States?

23 A. At that time, I was applying for it, and I was
24 only doing a part-time job to help them out, but later
25 on, it didn't get approved, and I didn't want to stay

1 longer, so I went back.

2 Q. So were you here on a U.S. -- strike that.

3 Were you here on a visitor's visa?

4 A. Yes.

5 Q. And you were working while you had a visitor's

6 visa?

7 A. I was just helping them, I wouldn't consider

8 it as work. I stayed at my friend's house, and I was

9 only working part time. I don't think that was work.

10 Q. Were you being paid for the work you did

11 there?

12 A. This company, no.

13 Q. You didn't receive any money at all from

14 this -- from this company?

15 A. This -- money from this company, no.

16 Q. Did you receive money from any company in the

17 U.S. for the work you did for Tagan?

18 A. No, because originally I wanted to have a

19 long-time stay in the United States, but it didn't work

20 out, so I went back Taiwan.

21 Q. What's the name of the friend you're staying

22 with?

23 A. Miss Lee, Mr. Lee, Mrs. Lee.

24 Q. When you were working for Tagan Company, you

25 were staying with Mrs. -- Mr. and Mrs. Lee?

1 A. I was staying at their house, but the work
2 with Tagan, it was just the work as an assistant. I was
3 just assisting them.

4 Q. What's Mr. and Mrs. Lee -- or Mrs. Lee's first
5 name?

6 A. I don't quite remember their first name
7 because, for instance, when somebody calls me, they may
8 not know my last name, we just go by the name.

9 Q. How do you spell Lee?

10 A. L-e-e (in English).

11 THE INTERPRETER: "L-e-e."

12 BY MR. OLSON:

13 Q. And where do they live?

14 A. At Walnut.

15 Q. What street name?

16 A. I don't know.

17 Q. How long did you live with them?

18 A. During that time.

19 Q. Yeah. How many months?

20 A. About two months. May I ask what is the
21 relationship between them and this matter?

22 Q. Unfortunately, you're not allowed to ask any
23 questions in deposition unless you don't understand a
24 question, then let me know, I'll rephrase it.

25 Do you recall what street name they -- what's

1 the name of the street they lived on?

2 A. I don't remember.

3 Q. How long had you known Mr. and Mrs. Lee?

4 A. Two, three years.

5 Q. And how did you meet them?

6 A. That's my -- they're my parents' friends,

7 that's how we got to know each other.

8 Q. So you've known them for only two or three

9 years?

10 A. Myself, yes.

11 Q. And you lived in their house last year,

12 correct?

13 A. Correct.

14 Q. And from what months?

15 A. I don't quite remember. Sometimes for a short

16 while. I don't remember.

17 Q. Did you work for Gary Chen when you were --

18 worked -- first started at Data Store?

19 MR. TANJI: Objection -- hold it. Objection;

20 vague as to "work for."

21 THE WITNESS: Who is Gary Chen?

22 BY MR. OLSON:

23 Q. Okay. Gary had the sales account for

24 Direct Access Technology before you at Data Store,

25 correct?

1 A. Yes.

2 Q. His last name was Chen, right?

3 A. I don't quite remember.

4 Q. Okay. Did he -- was he the one who hired you

5 when you first were hired at Data Store?

6 A. Of course not. The boss was Anderson. It was

7 Anderson.

8 Q. Did you work for Gary before he left?

9 A. Of course not.

10 Q. Did he give you any instruction or information

11 regarding Direct Access Technology before you took over

12 the account?

13 A. Yes, because we had e-mail exchange, and also

14 I would have a c.c., a copy of it, and we would meet

15 each other in the meeting, also.

16 Q. Could you have started in 2005 at Data Store?

17 A. No, the year 2004.

18 Q. How long was Gary working at Data Store after

19 you started?

20 A. Gary?

21 I don't quite remember, but I would say about

22 one year.

23 Q. And after you started, how long did Gary keep

24 working before he left?

25 A. Also, I don't quite remember, but about one

1 month.

2 Q. So your recollection is Gary left around 2004?

3 A. 2004, yes.

4 Q. Now, at the time that you started, Data Store

5 was already manufacturing enclosures under the name

6 Metal Gear, correct?

7 A. Correct.

8 Q. And they were manufacturing in China, Mainland

9 China?

10 A. Correct.

11 Q. And do they own the factory in Mainland China,

12 or do they have a contract with someone else?

13 A. I would think it was based on contract, but I

14 was not the boss, and I didn't know the details.

15 Q. Had you ever been to the factory in Mainland

16 China?

17 A. Yes.

18 Q. Did they manufacture the product for other

19 companies than Data Store at that factory?

20 A. Yes.

21 Q. And would it be fair to say that you do not

22 know who owned that factory?

23 A. Correct.

24 Q. Now, Data Store also had a factory in Taiwan,

25 correct?

1 A. No.

2 Q. Did they ever manufacture any product in
3 Taiwan?

4 A. I don't remember.

5 Q. Do you know whether the Metal Gear enclosures
6 were manufactured in Taiwan before you started?

7 A. As far as I know, when I was there, the
8 product was not manufactured in Taiwan, it was in
9 Mainland China.

10 Q. Did anyone tell you that at one time, the
11 enclosures were manufactured in Taiwan?

12 A. I don't remember.

13 Q. When did you first meet Mr. Anderson?

14 A. In the year 2004, when I was interviewed at
15 his company.

16 Q. Were you present at any meetings Mr. Anderson
17 had in 2003 with Mr. Wang?

18 A. No.

19 Q. When did you first meet Benson?

20 A. Also at the first interview.

21 Q. Okay. And when did you first meet Mr. Wang?

22 A. Which Mr. Wang?

23 Q. Patrick Wang.

24 A. I don't remember how many years ago, but it
25 was at his office.

1 Q. Had you ever talked with Mr. Wang before
2 2000 -- March 2004?

3 A. No.

4 Q. Now, you said that you sold some Metal Gear
5 enclosures to -- to Data Store, Galaxy Metal Gear and
6 DAT, correct?

7 MR. TANJI: Objection; it's misstating your
8 testimony. I think you said she sold to Data Store.

9 MR. OLSON: I thought I made that mistake, but
10 I'm glad you corrected me.

11 Q. While you were employed at Data Store, you
12 sold Metal Gear enclosures to CompUSA, Direct Access
13 Technology and Galaxy Metal Gear, correct?

14 A. Correct.

15 Q. Okay. Now, the buyer for CompUSA was Alex,
16 right?

17 A. I don't quite remember.

18 Q. Did you sell directly to CompUSA or did you
19 sell to Worldwide Marketing?

20 A. At that time, to Worldwide Marketing.

21 Q. And Worldwide Marketing is located in
22 Hong Kong and Taiwan, correct?

23 A. At that time, yes, but now maybe they have
24 changes.

25 Q. You don't know if they changed or not, right?

1 A. I don't know any details.

2 Q. Okay. Is it your understanding that Worldwide
3 Marketing sold the Metal Gear enclosures to CompUSA?

4 A. No, it's not like that. As far as I know, it
5 is not Worldwide Marketing selling to CompUSA, Worldwide
6 Marketing is a branch office of CompUSA in Taiwan, so
7 selling to Worldwide Marketing is the same as selling to
8 CompUSA, so we're selling directly to CompUSA through an
9 office in Taiwan.

10 Q. Were the invoices issued to Worldwide
11 Marketing?

12 A. I don't quite remember (in English).

13 THE INTERPRETER: "I don't quite remember."

14 BY MR. OLSON:

15 Q. You've never been employed by Worldwide
16 Marketing, have you?

17 A. No.

18 Q. Have you ever been employed by CompUSA?

19 A. No.

20 Q. Would it be fair to say the only thing you
21 know about the relationship between CompUSA and
22 Worldwide Marketing is what other people have told you?

23 A. No, I was told by the person I dealt with in
24 Worldwide company -- Worldwide Marketing.

25 Q. Right. You don't have any personal knowledge

1 of the contract between Worldwide Marketing and CompUSA,
2 do you?

3 A. Yes.

4 Q. You only know about the relationship between
5 Worldwide Marketing and CompUSA based on the
6 conversations you had with people at Worldwide
7 Marketing, right?

8 A. Yes.

9 Q. Now, you weren't working at Data Store when a
10 decision was made to use Metal Gear on enclosures,
11 correct?

12 A. Would you say it again?

13 Q. Okay. You started at Data Store in 2004,
14 correct?

15 A. Correct.

16 Q. Okay. And when you started, Data Store was
17 already selling Metal Gear enclosures, correct?

18 A. Yes.

19 Q. Well, is it true, then, that you were not at
20 any meeting where it was first decided to use Metal Gear
21 on enclosures?

22 A. Correct, because I was not there yet.

23 Q. Was Gary, in your dealings with him, did he
24 seem to you to be an honest person?

25 MR. TANJI: Objection; vague as to which Gary.

1 MR. OLSON: Okay. Let me clarify the
2 question.

3 Q. At one time when you were working at Data
4 Store, the Direct Access Technology account was handled
5 by Gary, correct?

6 A. Yes.

7 Q. Okay. You had dealings with Gary before he
8 left the company, right?

9 A. Correct.

10 Q. Did Gary impress you as an honest person?

11 A. Yes.

12 MR. OLSON: Let me show you what I'm going to
13 mark -- what is it, No. 3? Let the "court reporter"
14 read it to -- not the court reporter, the translator.

15 (The aforementioned document was marked by
16 the reporter as Applicant's Exhibit+ 3, for
17 identification; attached hereto.)

18 THE WITNESS: I understand it. Thank you.

19 BY MR. OLSON:

20 Q. You see at the bottom, there's a signature for
21 Data Store Technology Company, Limited?

22 A. Yes.

23 Q. Okay. Is that -- it lists a website. Is that
24 Data Store's website?

25 A. Yes, at that time, but now it's changed.

1 Q. Okay. And at that time -- do you see there's
2 a phone number for Data Store?

3 A. Yes.

4 Q. And was that the phone number of Data Store
5 back in July 19- -- or 2004?

6 A. Yes.

7 Q. And you see there's a fax number?

8 A. Yes.

9 Q. Okay. Was that the fax number for Data Store
10 in July 2004?

11 A. Yes.

12 Q. Have you ever seen this e-mail before today?

13 A. No.

14 Q. Does this refresh your recollection that the
15 Gary that had the Direct Access Technology account was
16 Gary Chen?

17 A. Yes. They contact him.

18 MR. TANJI: Well, objection, that's not
19 responsive to your question.

20 BY MR. OLSON:

21 Q. Does it -- after -- after reading the e-mail,
22 does that refresh your recollection that Gary's last
23 name was Chen?

24 A. It seems to me, yes, but I'm not sure.

25 Q. If you refer up to the top, it has a date of

1 Friday, July 9th, 2004; do you see that?

2 A. Yes, I see it.

3 Q. Does that refresh your recollection that Gary
4 Chen was working there in -- at Data Store in July 2004?

5 A. Yes.

6 Q. Do you have any reason to believe this e-mail
7 is not -- well, strike that.

8 Do you have any reason to believe that this
9 Exhibit 3 is not an accurate copy of the e-mail sent by
10 Gary Chen to Patrick at DAT?

11 MR. TANJI: Objection; calls for speculation,
12 lack of foundation.

13 THE WITNESS: I cannot identify anything in
14 this letter because I had never seen it, and I didn't
15 involve in it.

16 BY MR. OLSON:

17 Q. By the way, Gary was not related to you, was
18 he?

19 A. No.

20 Q. Could you take a look at the fourth paragraph
21 that begins with, "Frankly speaking"?

22 A. (Witness complies.)

23 Q. Do you have any reason to believe that Gary
24 was lying when he said, "Frankly speaking the order
25 quantity from April until today is very few. We could

1 understand the sales season is kind of weak during this
2 period of time in the world, but it shouldn't be that
3 small, especially you are exclusive in the U.S. market."

4 A. During the time when I was working for Data
5 Store, I didn't know his communication or correspondence
6 between him and DAT. As far as I know, I was only told
7 I could sell the products to anyone, no restrictions. I
8 didn't know about any exclusive rights or if he had any
9 communication with a third party. As a salesperson, all
10 I know is I need to sell more.

11 Q. Would it be accurate that if Data Store made a
12 promise to Direct Access Technology of exclusivity in
13 the U.S. market before 2004, you would not be aware of
14 that promise?

15 A. Yes, that is correct, because I was not with
16 Data Store.

17 Q. Do you recall when you first contacted NewEgg
18 about trying to sell them product?

19 A. I don't remember.

20 Q. Do you recall when you first contacted Frye's
21 to try and sell them product?

22 A. Also, I don't remember.

23 Q. Would it have been after 2005 when you first
24 contacted Frye's?

25 A. No. I don't remember.

1 MR. OLSON: Okay. Why don't we take a break.
2 I'll just go over my notes real fast, and then we might
3 be finished.

4 MR. TANJI: Okay.

5 MR. GURITZKY: I'm not so sure right now, not
6 much.

7 MR. TANJI: I'll have a few follow-up
8 questions, but not for very long.

9 (A ten-minute recess was taken.)

10 MR. OLSON: Okay. I don't have any further
11 questions.

12 MR. TANJI: I don't have any further
13 questions.

14 MR. GURITZKY: I have no questions.

15 MR. TANJI: All right. I'll guess I'll do one
16 master stipulation for both cases, so stipulate to
17 relieve the court reporter of her duties. Now, why
18 don't we have the original transcript sent to me, and
19 then I can arrange to send it to your Taiwan address,
20 and you'll have a chance to read it over, and if you
21 think you need to make any changes, let us know in
22 writing within 30 days, and then I'll maintain custody
23 of the original transcript; if the original is lost, a
24 certified copy can be used in lieu of the original, and
25 then I'll notify the other parties of any changes that

1 are made, and if for some reason the original transcript
2 is lost, a certified copy can be used instead.

3 MR. GURITZKY: Lost or unavailable for any
4 reason.

5 MR. TANJI: Yes. Yes.

6 MR. OLSON: Yeah. Yeah. So stipulated.

7 MR. GURITZKY: So stipulated.

8 MR. TANJI: All right. Thank you.

9 MR. OLSON: I'll take a copy.

10 MR. GURITZKY: I'll take a copy.

11 (Proceedings concluded at 12:26 p.m.)

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CERTIFICATE OF PERSON READING

DEPOSITION TO WITNESS

I, , whose address
is ,
a person who speaks the language of the witness, namely,
, did translate the within
deposition from English into the
language, reading same to the witness in her native
tongue to the best of my ability;

That all corrections and changes requested
by the witness were made and initialed by the witness;

That upon completion of said reading, the
witness did confirm to me that she had understood
the reading.

READER/INTERPRETER

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REPORTER'S CERTIFICATE

I, Jamie B. Snyder, a Certified Shorthand Reporter, holding a valid and current license issued by the State of California, CSR No. 5159, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed into typewriting under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this day of , 200 .

Certified Shorthand Reporter

Issued by the
UNITED STATES DISTRICT COURT
 Central District of California

GALAXY METAL GEAR, INC.

SUBPOENA IN A CIVIL CASE

V.

DIRECT ACCESS TECHNOLOGY, INC.

Case Number:¹ 91184213

TO: MOMO CHEN

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION WORLDESQUIRE LAW FIRM, 80 S. LAKE AVE., #708, PASADENA, CA 91101	DATE AND TIME 11/13/2008 10:00 am
---	--------------------------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) ATTORNEY FOR OPPOSER	DATE 11/10/2008
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER KENNETH TANJI, JR., WORLDESQUIRE LAW FIRM LLP, 80 S. LAKE AVE., #708, PASADENA, CA 91101	

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

Plf's EXHIBIT 1
 FOR IDENTIFICATION
 JAMIE B. SNYDER, CSR 5159
Nov. 13, 2008
 WITNESS M. Chen

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

80 S. LAKE AVE., #708, PASADENA, CA 91101

ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kenneth Tanji, Jr. (State Bar #162273) WorldEsquire Law Firm LLP 80 South Lake Avenue, #708, Pasadena, CA 91101		FOR COURT USE ONLY
TELEPHONE NO.: (626) 795-5555 FAX NO. (Optional): E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name): Plaintiff, GALAXY METAL GEAR, INC.		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT		
PLAINTIFF/ PETITIONER: GALAXY METAL GEAR, INC. DEFENDANT/ RESPONDENT: DIRECT ACCESS TECHNOLOGY, INC.		CASE NUMBER: BC382375
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE		

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
MOMO CHEN:

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: November 13, 2008 Time: 10:00 a.m. Address: WorldEsquire Law Firm, 80 S. Lake Ave., #708, Pasadena, CA 91101

- a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in Item 2. (Code Civ. Proc., § 2025.220(a)(6).)
- b. ☒ This deposition will be recorded stenographically ☐ through the instant visual display of testimony, and by ☐ audiotape ☐ videotape.
- c. ☐ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. ☐ If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: October 28, 2008

Kenneth Tanji, Jr.

(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPOENA)

~~Attorney for~~ GALAXY METAL GEAR, INC.

(TITLE)

(Proof of service on reverse)

中華民國外交部部長 請各國有關機關
對持用本護照之中華民國國民允予自由
通行，并請必要時盡力予以協助及保護。

The Minister of Foreign Affairs of the Republic of China requests all whom it may concern to permit the national of the Republic of China named herein to pass freely and in case of need to give all possible aid and protection.

(持照人簽名) (SIGNATURE OF BEARER)

陳麗君

THIS PASSPORT CONTAINS 48 PAGES

中華民國 REPUBLIC OF CHINA

131913774

陳麗君 CHEN, LI-CHUN

外文别名 / Also known as

LISA CHEN

國籍 / Nationality
REPUBLIC OF CHINA

性別 / Sex

F

發照日期 / Date of issue
18 JUN 2001

有效期截止日期 / Date of expiry
18 JUN 2011.

發照機關 / Authority

MINISTRY OF FOREIGN AFFAIRS

身分證統・編號 / Personal Id. No.

A220716833

DATE / Date of birth:

26 JAN 1968

出生地 / Place of birth.

TAIPEI CITY

P<TWNCHEN<<LI<CHUN<<<<<<<<<<<<<<<<<<<<<<
1319137740TWN6801265F1106183A220716833<<<<D6

PIFS EXHIBIT 2
FOR IDENTIFICATION
JAMIE B. SNYDER, CSR 5159
Nov. 13 2008
WITNESS M. Chen

2

DAT Inc.

From: "garychen" <garychen@datastor.com.tw>
To: "Patrick (DAT)" <pwdat65@verizon.net>
Sent: Friday, July 09, 2004 11:51 AM
Subject: About the order for 3.5" & 5.25" order

Hi, Patrick
Thank you for your attention.

I tried to call you, but it forward to the voice mail box.

How I can help you on the issue of 3.5" & 5.25" enclosure? Please let me know, otherwise, Anderson keep asking me about the order these days.

Frankly speaking, the order quantity from April until today is very few, we could understand the sales season is kind of weak during this period of time in the world, but it shouldn't be that small especially you are exclusive in the US market.

Patrick, let me help, tell me how to do, I can talk to Anderson, but I need to know how you are going to operate.

Awaiting your answer, email me or phone me +886-952-00-11-55.

White enclosure sample will deliver to you next week, please kindly note.

Best regards,
Gary Chen

Datastor Technology Co., Ltd.
IC website: www.datastor.com.tw
External enclosure: www.datastortech.com
Tel: +886-2-8976-9100 Ext. 241
Fax: +886-2-8976-9108

App's EXHIBIT 3
FOR IDENTIFICATION
JAMIE B. SNYDER, CSR 5159
Nov. 13, 2008
WITNESS M. Chen

DIRECT - 00710

4/3/2008

TONY TAN

DEPOSITION SIGNATURE

TONY TAN – DEPOSITION SIGNATURE

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this 2 day of APRIL, 2000, at CHINO, California.

A handwritten signature in black ink, appearing to read 'ANTONIO TAN', with a large loop at the beginning and a trailing flourish.

ANTONIO TAN

Jurat Certificate

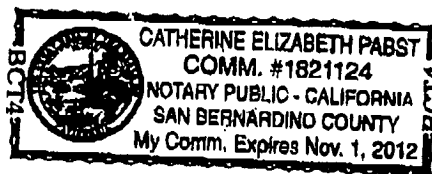
State of California

County of San Bernardino

Subscribed to and sworn to (or affirmed) before on this 2 day of April, 2010,

by Antonio Tan, proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ who appeared before me.

Signature Catherine Elizabeth Pabst (seal)



☐ If marked, then attached pages will bear embossment of above notary.

Optional: Not required by law, however, may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

Signature Authority of Signer:

☒ Individual

☐ Corporate Officer(s)

_____(Title)

☐ Partner (Limited or General)

☐ Attorney In Fact

☐ Trustee(s)

☐ Guardian/ Conservator

☐ Other _____

Description of Attached Documents

Title or type of Document: _____

Declaration

Number of Pages: _____

Date of Document: 4/12/10

Signer(s) other than Named Above:
